



ICSID (INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES)

ICSID Case No. ARB/01/3

**ENRON CREDITORS RECOVERY CORPORATION (FORMERLY ENRON CORPORATION)  
AND PONDEROSA ASSETS, L.P. V. ARGENTINE REPUBLIC**

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**DECISION ON CLAIMANTS' REQUEST FOR RECTIFICATION AND/OR A SUPPLEMENTARY  
DECISION OF THE AWARD**

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25 October 2007

**Tribunal:**

[Albert Jan van den Berg](#) (Appointed by the investor)

[Pierre-Yves Tschanz](#) (Appointed by the State)

[Francisco Orrego Vicuña](#) (President)

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# Decision on Claimants' Request for Rectification and/or a Supplementary Decision of the Award

## I. Procedural History

1. On 11 April 2001, arbitration proceedings were instituted under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention) in respect to a dispute between Enron Corporation and Ponderosa Assets, L.P. (the Claimants) and the Argentine Republic (the Respondent).
2. On May 22, 2007, in accordance with Rule 48(1)(b) of the ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) dispatched a certified copy of the English and Spanish versions of the Award (the Award) rendered in the present case on May 22, 2007 by the Tribunal composed of Professor Francisco Orrego Vicuna (President, Chile), Mr. Pierre-Yves Tschanz (Swiss), and Professor Albert Jan van de Berg (Dutch).
3. On June 25, 2007, pursuant to [Article 49\(2\) of the ICSID Convention](#), the Centre received from the Claimants a Request for Rectification and/or Supplementary Decision of the Award (the Request).
4. On July 5, 2007, the Centre received the prescribed lodging fee, and transmitted a copy of the Request to the Argentine Republic.
5. On July 16, 2007, in accordance with ICSID Arbitration Rule 49(2)(a), the Secretary-General registered the Request.
6. On July 19, 2007, the Tribunal invited the Respondent to present any observations it may have had in connection with the Request no later than July 31, 2007.
7. On July 31, 2007, the Respondent presented its observations on the Request.
8. On August 3, 2007, in accordance with ICSID Arbitration Rule 49(3), the Tribunal informed the Parties that it would not be necessary to meet with them to consider the Request, and that the Parties did not need to file additional documents either.

## II. Relevant Provisions in the ICSID Convention and Arbitration Rules

9. [Article 49\(2\) of the ICSID Convention](#) provides as follows:

"(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered."

10. ICSID Arbitration Rule 49(1) provides as follows:

"(1) Within 45 days after the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or the rectification of, the award. Such a request shall be addressed in writing to the Secretary-General. The request shall:

(a) identify the award to which it relates;

(b) indicate the date of the request;

(c) state in detail:

(i) any question which, in the opinion of the requesting party, the Tribunal omitted to decide in the award; and

(ii) any error in the award which the requesting party seeks to have rectified; and

(d) be accompanied by a fee for lodging the request."

### III. Considerations

#### *A. Position of the Claimants*

11. The Claimants' Request for Rectification and/or Supplementary Decision of the Award is based upon the premise that the Claimants have consistently requested throughout the arbitration proceeding that the Tribunal order the Respondent to compensate Claimants for all damages, including interest. In the Award, however, the Tribunal only awarded interest "until the date of dispatch of the Award," thereby omitting any reference to post-award interest. Accordingly, "the Claimants respectfully request that the Tribunal rectify the Award and/or issue a supplementary decision clarifying that the portion of the Award ordering Argentina to pay interest on the amount awarded shall continue until the date the Award is paid."

12. In support of their Request, the Claimants explain that interest is an incidental or additional claim, which the Tribunal is bound to determine in accordance with Article 46 of the Convention. While "compensatory" or pre-award interest compensates a party for the loss of the use of money between the time of the damaging act and the date of the award, "moratory" or post-award interest compensates such loss from the date of the award until it is paid in full.

13. In addition to the current tendency of most countries to enact legislation empowering courts to award post-award interest, the International Law Commission (ILC), in Article 38(2) of the Articles on Responsibility of States for Internationally Wrongful Acts, expressly acknowledges that "[i]nterest runs from the date when the principle sum should have been paid until the date the obligation to pay is fulfilled."<sup>1</sup>
14. The Claimants further submit that the rules of most arbitral institutions empower an arbitral tribunal to order the payment of post-award interest, as this fully compensates the prevailing party, discourages frivolous appeals by the losing party and encourages the prompt implementation of the award.
15. In a review of modern case law, the Claimants contend that awards which include both compensatory and post-award interest are consistent with the jurisprudence of ICSID, UNCITRAL, ICC and many other tribunals, which have awarded postaward interest.<sup>2</sup>
16. Turning to their submissions in these proceedings, the Claimants emphasize in their Request that the Prayers for Relief in both their Memorial and Reply expressly requested that the Tribunal "order that the Argentine Republic compensate Claimants for all damages they have suffered, plus interest compounded quarterly." Therefore, Claimants submit that in light of the definition of interest used by the tribunal in *McCullough & Co., Inc. v. Ministry of Post, Tel. & Tel.*, "a sum paid or payable as compensation for temporary withholding of money,"<sup>3</sup> the relief requested naturally included interest until the date of payment.
17. The Claimants also contend that a request for post-award interest was made in the Claimants' Opening Statement at the hearing on the merits, wherein counsel for the Claimants requested that the Tribunal:  
 "[I]ssue an award finding liability, awarding damages to claimants in the amount requested by claimants, updating the damages from the 2001 U.S. Dollar figure to date, add the cost [of] capital or appropriate interest rate and awarding arbitration costs to claimants."<sup>4</sup>
18. In the Claimants' understanding, while the request that damages be *updated* referred to pre-award interest, the additional request to add an *appropriate interest rate* was a clear reference to post-award interest.
19. Furthermore, the Claimants also contend that while there are two paragraphs in their Memorial which refer to pre-award interest,<sup>5</sup> such reference was neither implicitly nor explicitly to the

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<sup>1</sup> *Articles on the Responsibility of States for Internationally Wrongful Acts, 2001*, Report of the International Law Commission, *Yearbook of International Law Commission* 2001, approved by United Nations General Assembly, Fifty Sixth Session, Supplement No. 10 (A/56/10), Article 38(2).

<sup>2</sup> See *PSEG Global Inc. and Konya Ilgin Elektrik Uretim ve Ticaret Limited Sirketi v. Republic of Turkey*, (ICSID Case No. ARB/02/5), Award of January 19, 2007, available online at, <http://www.worldbank.org/icsid/cases/pdf/ARB025-Award.pdf>; *Tecnicas Medioambientales Tecmed, S.A. v. United Mexican States*, (ICSID Case No. ARB(AF)/00/2), Award of May 29, 2003, unofficial English translation of Award available online at, <http://www.worldbank.org/icsid/cases/laudo-051903%20-English.pdf>; *Autopista Concesionada de Venezuela, C.A. v. Bolivarian Republic of Venezuela*, (ICSID Case No. ARB/00/5), Award of September 23, 2003, available online at, [http://www.worldbank.org/icsid/cases/Award\\_Aucoven\\_Venezuela.pdf](http://www.worldbank.org/icsid/cases/Award_Aucoven_Venezuela.pdf).

<sup>3</sup> *McCullough & Co., Inc. v. Ministry of Post, Tel. & Tel.*, 11 Iran-US Cl. Trib. Rep. 3, 28 n. 21 (citing cases).

<sup>4</sup> Transcript of the hearing on the merits, Day 1, November 28, 2005, p. 84.

<sup>5</sup> Claimants' Memorial on the Merits, paras. 378, 382.

exclusion of the general "interest" claimed in the Prayers. A request for "interest" in general terms, the Claimants submit, has previously resulted in tribunals awarding post-award interest in addition to preaward interest,<sup>6</sup> even in a case where only pre-award interest was requested.<sup>7</sup>

20. In conclusion, the Claimants submit that they consistently requested "interest", which by definition included both pre and post-award interest, and that the jurisprudence of comparable tribunals has concluded that post-award interest should be awarded even in cases in which the prevailing party only requested preaward interest.

## ***B. Position of the Respondent***

21. In the Observations of the Argentine Republic on Claimants' Request for Rectification and/or Supplementary Decision, Respondent requests that the Tribunal:
  - (a) Reject Claimants' Request, and
  - (b) Order Claimants to pay all expenses and costs arising out of this proceeding.
22. The Respondent opposes Claimants' Request since in its view the Claimants seek to reopen a substantive debate about a matter already decided by the Tribunal. The specific rectification requested by the Claimants is not concerned with clerical, arithmetical or similar errors as envisaged by Article 49(2) of the Convention, least with minor technical errors of the kind addressed in various ICSID decisions confronted with rectification requests.<sup>8</sup> Consequently, the Respondent contends that the Claimants' Request is inadmissible.
23. Furthermore, the Claimants' submission of the question of interest was not omitted by the Tribunal, and therefore the Request's Supplementary Decision should not be issued. In the Respondent's view, the Request purports to reopen a debate on a question pertaining to the merits that the Tribunal has already decided, and thus, the Request should be held inadmissible in the light of the applicable rules and ICSID jurisprudence on the matter.<sup>9</sup>
24. In particular, the Respondent submits that the Tribunal previously decided the question and thus awarded interests until the date of the Award, as this is what had been requested by the Claimants. The issue of interest was specifically contemplated by the Tribunal,<sup>10</sup> which stated its interpretation of the petitions made on the subject of interest, with which the Claimants are currently not in

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<sup>6</sup> See *Tecmed* above; *Wena Hotels Limited v. Arab Republic of Egypt*, (ICSID Case No. ARB/98/4), Award of December 8, 2000, 41 ILM 896 (2002); 6 ICSID Rep. 89 (2004).

<sup>7</sup> See *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, (ICSID Case No. ARB/01/7), Award of May 25, 2004, available online at, <http://www.asil.org/ilib/MTDvChile.pdf>.

<sup>8</sup> *Noble Ventures, Inc. v. Romania*, (ICSID Case No. ARB/01/11), Decision on the Respondent's Request for Rectification of the Award of October 12, 2005 issued on May 19, 2006; *Emilio Agustin Maffezini v. Kingdom of Spain*, (ICSID Case No. ARB/97/7), Rectification of the Award issued on January 31, 2001, available online at, [http://www.worldbank.org/icsid/cases/emilio\\_RectificationoftheAward.pdf](http://www.worldbank.org/icsid/cases/emilio_RectificationoftheAward.pdf); *Compania de Aguas del Aconquija S.A. & Vivendi Universal v. Argentine Republic*, (ICSID Case No. ARB/97/3), Decision of the *ad hoc* Committee on the Request for Supplementation and Rectification of its Decision Concerning Annulment of the Award issued May 28, 2003, available online at, <http://www.worldbank.org/icsid/cases/vivendi-supp.pdf>.

<sup>9</sup> *Compania de Aguas del Aconquija SA* above, paras. 18, 19, 25.

<sup>10</sup> Award of May 22, 2007, paras. 352, 451, 452, and Relief, item 3.

agreement.

25. The current case at bar, the Respondent contends, is not even a question of implicit consideration by the Tribunal, such as in the cases of *Genin*<sup>11</sup> and *Aguas del Aconquija*,<sup>12</sup> but involves an explicit and deliberate decision by the Tribunal to only award interest for the period prior to the Award.
26. The Respondent provides the Tribunal with a number of ICSID cases where requests for rectification have been rejected on the ground that they went beyond the kind of error envisaged in Article 49(2) of the Convention, concerning issues of interpretation of the parties' positions in those cases, questions of evidence or an alleged misstatement of a point of law.<sup>13</sup>
27. The Respondent disagrees with the Claimants' contention that a request for postaward interest was made in the Memorials or at the hearing on the merits. In its reading of the Claimants' Memorial, the Respondent submits that the Claimants only requested pre-award interest,<sup>14</sup> and not merely a "brief mention", as the Claimants now argue, but in a detailed manner. The Respondent emphasizes that post-award interest was not mentioned once in the Memorials, and that even if post-award interest is mandatory under United States law, as the Claimants put forth, this is irrelevant to an arbitration conducted under international law.
28. The interpretation the Claimants have given to their petition of interest in the Opening Statement at the hearing on the merits, as noted above in paragraph 17, is far from correct according to the Respondent. No distinction was made between pre and post-award interest, which the Respondent submits is further confirmed by the corrected English version of the transcript. The Claimants' discussion of an updating of damages until the date of the hearing, and the request to add to that amount "an appropriate interest rate", are related to the same petition, and not to different petitions on interest,<sup>15</sup> just as it was put forth in the Claimants' Closing Statement at the hearing.<sup>16</sup>
29. The Respondent submits that the current issue concerning post-award interest is negated by the fact that the Claimants did not request this type of interest and, as held in *Genin*, there can be no such omission in such circumstances. What was requested was decided, and whether the Claimants agree with the decision or not is certainly not a minor technical error of the kind provided for in Article 49(2) of the Convention.
30. The illustrative cases invoked by the Claimants where post-award interest was granted in spite of interest only being requested in general terms, or even one case where post-award interest was allowed in spite of only a pre-award interest request, are not, in the Respondent's opinion, indicative that all tribunals should take the same view, nor that such awards are correct. The Respondent contends that the current case at bar is distinguishable because a request for interest in general terms was not made by the Claimants, but rather expressly requested only as pre-award

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<sup>11</sup> *Alex Genin and others v. Republic of Estonia*, (ICSID Case No. ARB/99/2), *Decision on Claimants' Request for Supplementary Decisions and Rectification of the Award of April 4, 2002*, available online at, <http://www.worldbank.org/icsid/cases/genin-sp.pdf>, para. 14.

<sup>12</sup> *Compania de Aguas del Aconquija SA*, above, para. 17.

<sup>13</sup> *Compania de Aguas del Aconquija S.A. & Vivendi Universal v. Argentine Republic*, (ICSID Case No. ARB/97/3); *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v. The Republic of Estonia*, (ICSID Case No. ARB/99/2); *Compania del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, (ICSID Case No. ARB/96/1).

<sup>14</sup> Memorial, paras. 378, 382.

<sup>15</sup> Transcript of the hearing on the merits, Day 1, November 28, 2005, p. 84.

<sup>16</sup> Transcript of the hearing on the merits, Day 9, December 8, 2005, p. 1470.

interest.

31. Moreover, for a tribunal to decide a question that has not been submitted to it will lead to an award which is *ultra petita*, and hence, subject to annulment on the ground that a tribunal has exceeded its powers. Along this same line, the Respondent highlights the Claimants' reference to the decision of the Iran-US Claims Tribunal which only awarded pre-award interest, as this is what had been requested by the Claimant.<sup>17</sup> Accordingly, the Respondent rejects the Claimants' characterization of this decision as distinguishable from our case at bar and submits that this decision is highly relevant in our current discussion as the situation is identical.
32. With regard to expenses and costs, given that the Respondent considers the Request to be inadmissible, the Respondent requests that the Claimants be held fully responsible for all expenses and costs arising out of the current proceeding.

## IV. Findings of the Tribunal

33. The Tribunal wishes first to explain what was before it in the light of the pleadings, petitions and record of this case. The Prayers for Relief as made in both the Claimants' Memorial and Reply, requested, insofar as interest is concerned, that the Tribunal "order that the Argentine Republic compensate Claimants for all damages they have suffered, plus interest compounded quarterly." The relief requested in the Request for Arbitration was worded in similar terms.<sup>18</sup> These prayers did not specify whether the interest requested should be ordered until the date of the award or the date of payment of the compensation. In view of this fact, the Tribunal examined the explanations given by the Claimants for their request of interest as this context will usually provide the rationale for interpreting the Prayers for Relief. The record indeed provided additional information on the request for interest. Section VII.G-7, captioned "Compound Interest" opens with a paragraph as follows:

"Claimants are entitled to interest at commercially reasonable rates... Pre-award interest compensates a successful claimant for two forms of loss: the time value of money and the lost opportunity to earn a reasonable rate of return."<sup>19</sup>

34. The last sentence of the last paragraph of this Section in the same Memorial (paragraph 382, just before the Prayer of Relief in paragraph 384) states:  
"Pre-award interest in this case should be compounded quarterly through the date of the award."<sup>20</sup>
35. Claimants' Reply is silent on interest, except for a reference to Claimants' damages claim "plus interest"<sup>21</sup> and a repetition of the Prayer for Relief "plus interest compounded quarterly".<sup>22</sup>

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<sup>17</sup> *Exxon, Corp. v. National Iranian Oil Co.* Case No. 154, Chamber Three, Award No. 322-154-3, Iran-US Cl. Trib., Award of 28 October 1987.

<sup>18</sup> Request for Arbitration, para. 52(f).

<sup>19</sup> Memorial, para. 378

<sup>20</sup> *Ibid.*, para. 382.

<sup>21</sup> Claimants' Reply, paras. 644, 678.

<sup>22</sup> *Ibid.*, para. 680(2).

36. Neither Claimants' Memorial nor their Reply mentions post-award interest.
37. Another source contained in the record to which the Tribunal also turned is the transcript of the hearing on the merits. The version of the transcript produced by the court reporter, Mr. David Kasdan, a most experienced professional, indicates that in their Opening Statement the Claimants requested that the Tribunal "issue an award finding liability, awarding damages to claimants in the amount requested by claimants, updating the damages from the 2001 U.S. Dollar figures to date, add the cost ever [over, of] capital or appropriate interest rate and awarding arbitration costs to claimants."<sup>23</sup>
38. The Respondent has pointed out, however, that the version of the transcript corrected by the Claimants includes a correction to the effect that the damages should be updated from the 2001 U.S. Dollar figures to date, but deletes that the Tribunal should "add" the cost of capital or appropriate interest rate and inserts instead that such updating should be made "at the cost [of] capital or an appropriate interest rate."<sup>24</sup> This correction was in line with the conclusions of the Claimants in their Closing Statement, where it is requested "... updating the damages from the dollar amounts in U.S. dollars of 2001 to the present date, using either the WACC or an appropriate interest rate..."<sup>25</sup>
39. After carefully examining these elements of the record, the Tribunal reached the conclusion contained in the Award to the effect that, as it had been requested, interest was awarded "until the date of dispatch of the Award".<sup>26</sup>

## ***A. Findings of the Tribunal on the merits of the Request***

40. On the basis of this background the Tribunal can now turn to the consideration of the rectification and supplementary decision requested by the Claimants on this matter.
41. The Tribunal must note at the outset that it does not disagree with the Claimants' discussion of the role of interest in updating compensation and the value of money along a certain period of time, just as it does not disagree with the Claimants' view that tribunals have an inherent authority to recognize this role of interest, as confirmed by an extensive arbitration practice which the Claimants invoke. This recognition is normally effectuated by either using the Weighted Average Cost of Capital (WACC) or interest.
42. The issue lies in a different proposition, namely whether this can be done by a tribunal in the absence of a request to that effect. The Tribunal concluded and now reiterates that, just as it must decide a matter that has been duly submitted and petitioned, the same is conversely true that this cannot be done if not requested, as this would amount to an excess of power which, as the Respondent explains, can result in a decision that is *ultra petita* and thus subject to the sanction of an annulment.

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<sup>23</sup> Transcript of the hearing on the merits, Day 1, November 28, 2005, p. 84.

<sup>24</sup> Transcript of the hearing on the merits, Day 1, November 28, 2005, p. 84, corrected version, emphasis in the original correction.

<sup>25</sup> Transcript of the hearing on the merits, Day 9, December 8, 2005, p. 1470.

<sup>26</sup> Award para. 452 and Relief, item 3.

43. In this case it is quite evident that pre-award interest was expressly requested, but not so with respect to post-award interest. If not expressly requested, the next question for the Tribunal is whether post-award interest can be considered as having been impliedly requested.
44. The Claimants, as noted above, submit in their Request the distinction between "compensatory" and "moratory" interest, the first related to pre-award interest and the second to post-award interest. Assuming that such a distinction is to be retained, the fact is that interest in this case was requested only in the context of compensation, and thus falls squarely in the first category identified by Claimants. The updating of compensation to "the present date" as requested by Claimants can be understood, as the Respondent argues, until the date of the closing of the hearing, or at the most, as the Tribunal decided, until the date of dispatch of the Award in light of Claimants' reference to "pre-award" interest. It is definitely not related to a future date, as in that case it would have been for example indicated by referring to the date of complete payment of the Award.
45. The Tribunal has also examined the text of the ILC's Article 38(2) of the Articles on State Responsibility, where, as the Claimants rightly recall, it is indicated that interest runs "until the date the obligation to pay is fulfilled."<sup>27</sup> Yet, the Commentary to this Article explains that the actual calculation of interest by way of reparation, "raises a complex of issues concerning...the terminal date (date of settlement agreement or award, date of actual payment)...", and that there is no uniform approach to such issues. It is then concluded that "[i]n practice the circumstances of each case and the conduct of the parties strongly affect the outcome."<sup>28</sup>
46. Equally pertinent is the explanation of the Commentary to the effect that:  
"(12) Article 38 does not deal with post-judgment or moratory interest. It is only concerned with interest that goes to make up the amount that a court or tribunal should award, i.e. compensatory interest. The power of a court or tribunal to award post-judgment interest is a matter of its procedure."<sup>29</sup>
47. It is apparent from the above that the ILC did not retain the distinction between compensatory and moratory interest in connection with Article 38(2) of the Articles and, therefore, the Article in question does not support the argument of the Claimants as to post-award interest in this context.
48. The Claimants also submit that the reference made in both the Opening and Closing Statements to the updating of compensation should be understood as having included, and certainly not having excluded, a request for post-award interest. This is the context in which it was first stated in the original transcription that the Tribunal should "add" to such updating the cost of capital or an appropriate interest.
49. Any doubt, however, has now been clarified by the corrections to which the Government of Argentina points out, where "at" was substituted for "add", thus reinforcing the view that either the WACC or an appropriate interest were conceived as an element of the updating until the "present date", not to follow that date. Even if this amendment of the record of the hearing was attributed to

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<sup>27</sup> See *Articles* above.

<sup>28</sup> James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text, and Commentaries*, (ed., Cambridge University Press) (2002), Commentary 10 to Article 38(2), pp. 238-239.

<sup>29</sup> *Ibid.*, p. 239.

a clerical error, the Closing Statement made the same choice of words, thus showing that this was so stated by the Claimants.

50. The same conclusion holds true in light of the copies of the Powerpoint presentations the Claimants made in connection with both the Opening and the Closing Statements, in the last page of which it is requested as a Prayer that the Tribunal issue an Award "...c. updating damages from 2001 USS to date at the cost of capital or an appropriate interest rate."
51. There was little room, if any at all, for the Tribunal to reach a conclusion different from that of the Award. There was no ground, as there is no ground now, to consider that the record contained an implied request for post-award interest.
52. The arbitral awards referred to by Claimants grant post-award interest because the claimants in those cases requested post-award interest. Amongst the numerous cases mentioned by Claimants there is only one case in which the arbitral tribunal awarded post-award interest although claimant had requested pre-award interest only.<sup>30</sup> However, the arbitral award in that case offers no reasoning whatsoever why the tribunal was minded to grant the claimant more than it actually requested.
53. Claimants also refer to *Exxon, Corp. v. National Iranian Oil Co*<sup>31</sup> As Claimants rightly state, that case is not on point, inasmuch as the tribunal awarded interest only until the date of the award, although the claimant had requested post-award interest. Claimants, however, rely on the concurring opinion in that case by Judge Charles N. Brower, who indicated: "Presumably this Claimant, like every other claimant, would prefer to recover interest to the date of actual payment." In light of the record of the case at bar, however, the Tribunal believes that it cannot arrive at its conclusions by second-guessing what a party might or not have preferred.
54. Claimants justify the mention of "pre-award" interest only by stating:  
"The only reason Claimants mentioned pre-award interest specifically is because in the US, for example, judges have discretion to calculate a higher level of pre-judgment interest, whereas post-judgment interest is mandatory and set by statute (and thus, is not normally a matter that needs to be briefed and requested separately). Given this traditional distinction in certain domestic legislation, Claimants deemed it relevant specifically to mention pre-award interest, but this lone reference to pre-award interest was not to the exclusion of post-award interest, which would be an illogical construction of Claimants' Memorials and Prayers and the request in their opening statement."<sup>32</sup>
55. It was mentioned before that the reference to "pre-award" interest is not a "lone reference" and that the Tribunal infers the opposite from Claimants' written and oral submissions. Claimants' written and oral submissions do not mention or indicate in any manner that Claimants' reference to pre-award interest is made for reasons of domestic law. International arbitrators, deciding on the basis of the ICSID Convention over a BIT claim, cannot be required to presume that a claimant addresses

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<sup>30</sup> See *MTD* above.

<sup>31</sup> See *Exxon* above, *Concurring Opinion of Judge Charles N. Brower, para. 4, as cited in Claimants' Request for Rectification and/or Supplementary Decision, Footnote 50.*

<sup>32</sup> Claimants' Request for Rectification and/or Supplementary Decision, Footnote 45.

interest from that perspective.

## ***B. Conclusions of the Tribunal***

56. Insofar as the Request concerns a request for a supplementary decision, the Tribunal must conclude that there was no claim, either express or implied and within the meaning of Article 46 ("incidental or accidental claims") of the ICSID Convention or otherwise, for post-award interest, and hence none could be awarded.
57. Insofar as the Request concerns a request for rectification, the Tribunal does not consider that there was a clerical, arithmetical or similar error in the Award. Even if the Claimants could establish that there was an error, which they have not, such error, as the Respondent has noted, would by no means be a minor technical error of the kind envisaged by [Article 49\(2\) of the ICSID Convention](#). While the Respondent has petitioned that such request be declared inadmissible on this ground, the Tribunal does not consider this to be appropriate as the Claimants are entitled to have their views examined.
58. Although the Claimants have not succeeded in this proceeding, the Tribunal is of the view that they believed in good faith that there was room for elucidation of an aspect of the Award in respect of which they had a different understanding. Accordingly, the Tribunal will order that each party bears its own legal costs, but that the Claimants pay in full the costs of this proceeding, including the fees and expenses of the Centre and the Members of the Tribunal.

## **V. Decision**

59. In view of the above considerations the Tribunal decides to:
  - (1) Reject the Request for Rectification and/or a Supplementary Decision of the Award;
  - (2) Order the Claimants to pay in full the costs of this proceeding, including the fees and expenses of the Centre and the Members of the Tribunal; and
  - (3) Determine that each party shall bear its own legal costs.